

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 390 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

RUXANABEN FAKRUDDIN SURATI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 390 of 2002
MR BS PATEL for Petitioner No. 1
MRS RANJAN B PATEL for Petitioner No. 1
Mr.B.D. Desai,APP for Respondent No. 1
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 04/10/2002

ORAL JUDGEMENT

1. Rule. Learned A.P.P. Mr. Desai waives service

of rule.

In the facts and circumstances of the case, by consent of parties, the matter is taken up for final hearing.

2 The revisioner who was a witness in Sessions Case no.203/2002 in the Court of Additional Sessions Judge, Baroda, is aggrieved by the notice Exh.39, order thereunder and consequent action taken in the matter by the learned Additional Sessions Judge, Baroda, joining her as accused no.4 in the Sessions case.

3. The facts of the case in brief are that one Saifali alias Saifu Fakruddin Surti, Suber Ahmedbhai Davawala, and Mahmeduvesh Noormahmed Memon are being tried for offences punishable under Sections 302 r.w.s. 201, 302 r.w.s. 34, Section 302 r.w.s.201 and Section 34 of the Indian Penal Code as well as Section 135 of the Bombay Police Act. The present revisioner was cited as a witness. After her deposition was over, learned Additional Sessions Judge issued notice Exh.39 on the revisioner calling upon her to show cause why she should not be arraigned as accused in exercise of powers under Section 319 of the Criminal Procedure Code. It appears that the said notice was served on the father of the revisioner. The father of the revisioner appeared before the learned Sessions Judge with an application Exh.41 stating that the notice issued on the revisioner is served on him but the revisioner had gone out of station, and therefore, in order that he may inform his daughter and she may appear either in person or through Advocate and tender a reply, adjournment may be granted. The learned Additional Sessions Judge passed the following order:

ORDER

"Heard. No grounds for the adjournment of the case on mere say that the applicant has not informed the delinquent."

Sd/-illegible
2-8-02

On that very day, he passed an order below Exh.39 stating that:

"The notice is issued on witness Ruksanaben. It is served on her father, still she has not remained present. Her father has accepted the service of notice.

It is not possible to accept that he could not inform his daughter and considering the material evidence stated in the notice witness Ruksanaben is ordered to be joined as accused in exercise of powers under Section 319 of the Criminal Procedure Code. Bailable warrant in the sum of Rs.5000/- be issued against her."

Sd/-illegible

2-8-02

4. Aggrieved by this, the Revision Application is preferred wherein it is prayed that the order below Exh.39 be quashed and set aside and all consequent proceedings in pursuance to the impugned order also may be quashed and set aside.

5. Learned Advocate Mr. B.S. Patel appearing for the revisioner has placed on record a certified true copy of the amended charge dated 6-9-2001 wherein the revisioner is indicated as accused no.4. Mr. Patel states that thereafter, the matter has not proceeded further.

5.1. Learned Advocate Mr. Patel submitted that the learned Sessions Judge has neither rejected nor granted prayer of adjournment sought by the father of the revisioner. Order below Exh.39 is passed by stating that it is not possible to accept the say of the father that he has not been able to inform the revisioner. No reasons are indicated for not accepting the say of the father. By rejecting the application of the father, the revisioner is denied the right of showing cause why she should not be arraigned as accused. In fact, the very purpose behind issuance of notice Exh.39 is frustrated by the impugned order and consequent action. It has turned out to be an empty formality carried out by the trial Court. Mr. Patel, therefore, submitted that the order may be quashed and set aside.

6. Learned Additional P.P. Mr. Desai has opposed this Revision Application.

7. Having heard learned Advocate Mr. Patel, learned A.P.P. Mr. Desai and having gone through the relevant papers as well as the orders in question, this Court is satisfied that the revisioner has been denied the right of hearing purported to have been offered to her by issuing notice Exh.39. The very purpose behind issuance of notice is scuttled by non grant of time to the father of the revisioner who was served with the notice for informing his daughter. When a person is sought to be

arraigned as an accused and when a notice is given, fair and reasonable opportunity has to be offered to such a person to show cause and explain why she should not be arraigned as an accused. This right has been denied to the revisioner as is apparent. No reasons are assigned for not accepting the say of the father that though he is served with the notice addressed to the revisioner he has not been able to inform the revisioner. It hardly would have made any difference if some time was granted to afford a reasonable opportunity to the revisioner to show cause why she should not be arraigned as an accused. An important right of a person, is therefore, denied. The order, therefore, cannot be permitted to stand and deserves to be set aside by accepting this Revision Application.

8. The Revision Application is accepted. The order below Exh.39 in Sessions Case no.203/2002 pending before the learned Additional Sessions Judge, Baroda, is hereby set aside. As a necessary implication, the amendment made in the charge Exh.8 by adding the revisioner as accused no.4 is also set aside. The trial Court is directed to afford a reasonable opportunity to the revisioner pursuant to notice Exh.39 and decide the same afresh in accordance with law. Rule is made absolute accordingly.

(A.L.Dave, J.)

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